

**Petition for Relief From a Conviction or Sentence  
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

**Instructions**

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out an in forma pauperis form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$ 200.00 , you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and 1 copy to the Clerk of the United States District Court at this address:  

|                                     |   |
|-------------------------------------|---|
| <input type="checkbox"/>            | Camden: Mitchell H. Cohen U.S. Courthouse 4th & Cooper Streets Camden, NJ 08101               |
| <input type="checkbox"/>            | Trenton: Clarkson S. Fisher Fed. Bldg. & U.S. Courthouse 402 East State St. Trenton, NJ 08608 |
| <input checked="" type="checkbox"/> | Newark: Martin Luther King, Jr. Fed. Bldg. & U.S. Courthouse 50 Walnut St. Newark, NJ 07101   |
9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

|   |                         |  |
|---|-------------------------|--|
| <b>United States District Court</b>   |                         | District: DNJ  |
| Name (under which you were convicted):<br>Martin Luther Baskerville                       |                         | Docket or Case No.:<br>2:18-cv-09873-CCC   |
| Place of Confinement :<br>NJ State Prison - Northern State                                | Prisoner No.:<br>548469 |  |
| Petitioner (include the name under which you were convicted)<br>Martin Luther Baskerville | v.                      | Respondent (authorized person having custody of petitioner)<br>Marcus O. Hicks, Esq., Acting Commissioner, NJ<br>Department of Corrections |
| The Attorney General of the State of New Jersey   |                         |  |

**PETITION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
Superior Court, NJ  
10 Main Street  
Hackensack, NJ 07601  
  
(b) Criminal docket or case number (if you know): S-88-04-524
2. (a) Date of the judgment of conviction (if you know): 07/01/1993  
(b) Date of sentencing: 08/31/1993
3. Length of sentence: 20 years plus concurrent sentences
4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
5. Identify all crimes of which you were convicted and sentenced in this case:  
armed robbery (20 years)  
aggravated assault (18 months concurrent)  
resisting arrest (18 months concurrent)
6. (a) What was your plea? (Check one)
 

|  |   |
|--|---|
| <input checked="" type="checkbox"/> (1) Not guilty | <input type="checkbox"/> (3) Nolo contendere (no contest) |
| <input type="checkbox"/> (2) Guilty                | <input type="checkbox"/> (4) Insanity plea                |

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?  
Plea was not guilty to all charges.

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury    ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes    ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes    ☐ No

9. If you did appeal, answer the following:

(a) Name of court:    Appellate Division

(b) Docket or case number (if you know):    A-5960-94T4

(c) Result:    Judgment affirmed

(d) Date of result (if you know):    10/30/1996

(e) Citation to the case (if you know):

(f) Grounds raised:    illegal sentence

(g) Did you seek further review by a higher state court?    ☒ Yes    ☐ No

If yes, answer the following:

(1) Name of court:    NJ Supreme Court

(2) Docket or case number (if you know):    148 NJ 461 (1997)

(3) Result:    Appeal denied, judgment affirmed

(4) Date of result (if you know):

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(5) Citation to the case (if you know):

(6) Grounds raised: illegal sentence

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding: correct illegal sentence, jail credits

(5) Grounds raised: illegal sentence; jail credits. 4 hearings before Judge Jerejian (Feb 2015, May 2015, July 2015 & Sept. 2015); 1 review before Judge Kaslau (on the papers) (March 2016)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: Granted

(8) Date of result (if you know):

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(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes    ☐ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: jail credits granted

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No

(2) Second petition: ☐ Yes ☒ No

(3) Third petition: ☐ Yes ☒ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Petitioner appealed the fourth motion to correct illegal sentence to the Appellate Division, for resentencing; and to the NJ Supreme Court after Appellate Division's denial of re-sentencing.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.**

**GROUND ONE:** Illegal sentence; failure to award proper jail credits

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No
- (2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post-conviction relief

Name and location of the court where the motion or petition was filed:  
Superior Court, Bergen.

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):  
Petition was ruled untimely.

- (3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

- (4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:  
Appellate Division;

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):  
Appeal denied

- (7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

NJ Supreme Court's denial certification for re-sentencing was entered on 03/26/2018, and various further steps are being reviewed by counsel.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:  
Multiple motions for jail credit were filed by post-judgment motions; and were granted, essentially by concession of the State.

**GROUND TWO:**

Conviction in NY was illegal because NJ Sheriff's Department falsified arrest records or failed to turn over arrest records to provide alibi support in NY case

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At the time of the alleged homicide in NY, Baskerville was in Bergen County Jail and the Bergen County Sheriff's Dept, having jurisdiction and records, failed to provide proof of jailed status and thereby prevent the alibi defense from being possible in NY.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Due to Sheriff's Department's loss of records, this issue could not be proved until the records were "recovered" by a private-entity, third-party manager of jail records, which resulted in Lt. Stapleton of Bergen County Sheriff's Office writing an uncertified, unsworn letter on August 15, 2006, confirming the right to obtain jail credits.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: post-conviction relief

Name and location of the court where the motion or petition was filed:

Superior Court

Docket or case number (if you know):

Date of the court's decision:



Result (attach a copy of the court's opinion or order, if available):

denied. Because the State withheld records until at least 08/15/2006, direct appeals and initial post-conviction relief were effectively frustrated, for "lack of evidence."

- (3) Did you receive a hearing on your motion or petition? ☒ Yes ☐ No
- (4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No
- (5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No
- (6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:  
Appellate Division

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

denied. Because the State withheld records until at least 08/15/2006, direct appeals and initial post-conviction relief were effectively frustrated, for "lack of evidence."

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :  
have used to exhaust your state remedies on Ground Two  
post-conviction relief

### GROUND THREE:

NA

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

**GROUND FOUR:**  
NA

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

All prior filings were before Judge Cecchi of the USDC/DNJ.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

This docket number. This petition was previously filed and has been pending before Judge Cecchi.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Albert Hendricks, PD

(b) At arraignment and plea:

Sheldon Liebowitz, Liebowitz & Liebowitz, Englewood

(c) At trial:

Albert Hendricks, PD

(d) At sentencing:

Albert Hendricks, PD

(e) On appeal:

Bernadette DeCastro, Newark

(f) In any post-conviction proceeding:

Theodore Silwenski, Fort Lee

(g) On appeal from any ruling against you in a post-conviction proceeding:

Robert Brigigliaboro, PD

Other appeal: Nancy Ferro, Esq., 31 E. Ridgewood Avenue, Ridgewood, NJ 07450

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*  
NJ Supreme Court's review of illegal sentence was rendered 03/26/2018. In addition, due to pendency of other proceedings, the time is not counted under 2244(d)(2).

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

See attached supplement.

or any other relief to which petitioner may be entitled.



Signature of Attorney (if any)  
**KIMM LAW FIRM**

**333 Sylvan Avenue, Ste. 106**

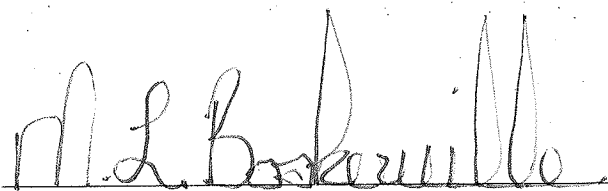
**Englewood Cliffs, NJ 07632**

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 8/14/18 (month, date, year).

Executed (signed) on

8/14/18

(date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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